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International President

RICK L. MARCEAU  
Assistant President

DAN E. JOHNSON  
General Secretary and Treasurer

**united  
transportation  
union**



14600 DETROIT AVENUE  
CLEVELAND, OHIO 44107-4250  
PHONE: 216-228-9400  
FAX: 216-228-0937  
www.utu.org

**LEGAL DEPARTMENT**

CLINTON J. MILLER, III  
General Counsel

• KEVIN C. BRODAR  
Associate General Counsel

• ROBERT L. McCARTY  
Associate General Counsel

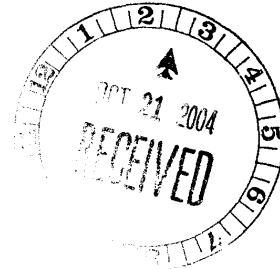
• DANIEL R. ELLIOTT, III  
Associate General Counsel

October 20, 2004

UPS Next Day Air

Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street N W  
Washington, DC 20423-0001  
(202) 565-1674

212303



Re: Finance Docket No. 34505  
East Brookfield and Spencer Railroad, LLC - Lease and  
Operation Exemption - CSX Transportation, Inc.

Dear Secretary Williams:

Please find enclosed the original and 10 copies of United Transportation Union's Petition to Revoke for filing in the above captioned matter, along with our check in the amount of \$200 to cover the filing fee. We have also enclosed a disk in WordPerfect format.

Thank you for your cooperation.

**FILED**

OCT 21 2004

**SURFACE  
TRANSPORTATION BOARD**

Enclosures

cc: C. J. Miller, III, General Counsel

Sincerely,

Daniel R. Elliott, III  
Associate General Counsel

**ENTERED  
Office of Proceedings**

OCT 22 2004

Part of  
Public Record

**FEE RECEIVED**

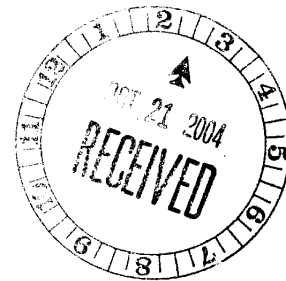
OCT 21 2004

**SURFACE  
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BEFORE THE  
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34505

EAST BROOKFIELD AND SPENCER RAILROAD, LLC  
– LEASE AND OPERATION EXEMPTION –  
CSX TRANSPORTATION, INC.

PETITION TO REVOKE

**FILED**  
OCT 21 2004  
SURFACE  
TRANSPORTATION BOARD

**FEE RECEIVED**  
OCT 21 2004  
SURFACE  
TRANSPORTATION BOARD

Daniel R. Elliott, III  
Associate General Counsel  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, Ohio 44107-4250  
Tel: (216) 228-9400  
Fax: (216) 228-0937

Attorney for United Transportation Union



Petitioner United Transportation Union (“UTU”) respectfully asks the Surface Transportation Board (“STB”) to revoke the application of the class exemption to the transaction or transactions embraced in the Notice of Exemption (“Notice”), filed May 12, 2004 by East Brookfield & Spencer Railroad, LLC (“EB&SR”) in the entitled proceeding.

EB&SR is a newly-formed noncarrier created to take over an important portion of the switching operations of CSX Transportation, Inc. (“CSXT”) at the New England Automotive Gateway Facility in East Brookfield and Spencer, Worcester County, MA. Rather than attempt to negotiate under the Railway Labor Act for contracting out the CSXT operations to EB&SR, CSXT has entered into a series of complex arrangements with EB&SR to perform work for CSXT.

EB&SR entered into a Lease Agreement with CSXT on April 23, 2004 for the lease of approximately 4 miles of track. The leased track consists of approximately 4 miles of a passing track along CSXT’s line between mileposts 60 and 64 in East Brookfield and Spencer, Massachusetts, including a strip of right-of-way adjacent to and beneath the same. The lease also includes approximately 270 feet of lead track running from the passing track at milepost 63.08 to the property line of the proposed New England Automotive Gateway Facility (“Facility”) in East Brookfield, MA. As part of the lease agreement, CSXT will retain certain rights to operate over the line to serve the Facility, and to use the track in the event of an operating emergency.

However, the site of the facility was acquired by CSXT Real Property, Inc., subject to the condition that Northeast Vehicle Services LLC (“Northeast”), which is in the same corporate family as EB&SR, would operate the facility. CSXT Real Property in turn hired Transdevelopment, a national development manager, to create the auto transload facility and is leasing the site back to Northeast, which



will operate the facility. EB&SR will provide switching services for the Facility.

More specifically, the land and buildings of the \$10.8 million New England Automotive Gateway under construction off Route 49 at the Spencer-East Brookfield line have all been sold to CSX Transportation, the railroad that will bring vehicles to the auto distribution center. George W. Bell, II, who is one of the owners of EB&SR and Northeast, confirmed in the press that he and his partner, Steven M. Pugliese, sold part of the property they own between Route 49 and the CSXT railroad main line to CSXT. According to records at the Worcester District Registry of Deeds, the \$3.2 million sale took place April 23 and involves two parcels, one containing just over 127 acres and another containing just over 35 acres. The land was sold to Holston Land Co. Inc., a Virginia corporation based at the Jacksonville, Florida headquarters of CSXT. The company is involved in acquiring real estate for CSXT. CSXT spokesman Paige Kane confirmed in the press that CSXT acquired the auto distribution center site and has leased the property back to Mr. Bell and his partner.

Mr. Bell said the sale to the railroad's real estate holding company involves only that portion of the land owned by Seven Mile River Nominee Trust, of which he and Mr. Pugliese are trustees. The auto distribution center is on the property. Additional, undeveloped land is adjacent to the auto distribution site.

The exemption claimed by the Notice of Exemption should be revoked for the following reasons, among others:

1. The transaction, in whole or in part, noticed for exemption does not fall within the noncarrier line acquisition class exemption, promulgated by 49 C.F.R. § 1150.32, *et seq.*
2. Regulation of the transactions, in whole or in part, is necessary to carry out the rail transportation policy of 49 U.S.C. § 10901.

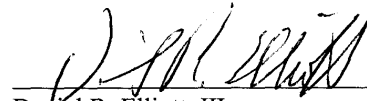


3. The Notice contains false or misleading information about the transaction.

Petitioner has made a discovery request pursuant to 49 C.F.R. § 1121, and will supplement this

Petition to Revoke in accordance with the STB's procedure.

Respectfully submitted,



Daniel R. Elliott, III  
Associate General Counsel  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, Ohio 44107  
Fax: (216) 228-9400  
Tel: (216) 228-0937


Attorney for United Transportation Union



**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing United Transportation Union's Petition to Revoke has been served this 20<sup>th</sup> day of October, 2004, via first-class, postage pre-paid mail upon the following:

Betty Joe Christian  
Steptoe & Johnson, LLP  
1330 Connecticut Ave., N.W.  
Washington, DC 20036

  
Daniel R. Elliott, III